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**File No.** O. Work Comp/44

Legal Department

A **BRANCH**

**Subject:—**

Opinions Under the

Workmen's Compensation Act, 1923

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Form 194 a.

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CONTENTS.

Legal Department File O. Work Comp/1944


| Sr. No. | Compilation No. | Subject | Pages. |
|---|---|---|---|
| | | Workmen's Comp.Act, 1923. Sec 3(1). | |
| 1. | On.120 6-1-44. | Whether Govt. would be liable to pay any compensation under the | 1. |
| 2. | On.8396 29-11-44. | Sec 13 - Whether Post can sue the Insurance Company. | 3-7. |


P.W.D. 2617

N.W.D. 2617

Since the accident did not arise out of and in the course of Mr. D.B.Jadhav's employment, Government would not be liable to pay any compensation under section 3(1) of the Workmen's Compensation Act, 1923. The view taken by the Officer Commanding Fire Services in his endorsement at page 9 ante is correct.

Sd. 5/1

Remembrancer of Legal Affairs.

U.R. to H.D.(A.R.P.) No.120 dated the 6th January 1944.

VGP. 9-7-56.

It appears that the Bombay Port Trust has entered into an agreement with the Secretary of State for India in Council to furnish, provide and supply at Bombay at the Dock Bunders and in the Harbour at such time as shall be specified in the notis all such suitable labour boat tonnage land carriage and all other means for landing and conveying by water and by land and handing over to consignees all stores and cargo brought by sea into the Port of Bombay for any services and departments subject to the control of Government or elsewhere including ~~subject to the control of Government or elsewhere including~~ gunpowder and other explosive (all of which stores and cargo including gunpowder and explosive are hereinafter refsrred to under the general description of stores). On 27th September 1943 out of 80 coolies of the Bombay Port Trust reported at the A.F.V. Park 10 coolies were detailed to work at No.8 A Alexandra Dock on sorting Government Ordinance Stores and Kushaba Tukaram was one of them. These coolies were dismissed at 5-30 p.m. and asked to report again at 7-30 a.m. While returning home Kushaba Tukaram tried to run and cross between the Railway wagons. He was caught and crushed between the two wagons and met his death instantaneously. The Court of Enquiry has recorded the following conclusion: "Since the circumstances under which the coolie met his death clearly indicate that he was at the time acting in breach of regulations and therefore misbehaving himself Ordinance Group A.F.V.Section (I.E.Secretary of State for India has a contractual right of indemnity against the Bombay Port Trust under clause 11 of an agreement dated 18th October 1927 made between the Trustees of the Port of Bombay and the Secretary of State for India in Council for the amount claimed and payable under the Workmen's Compensation Act". The Brigadier agrees with the findings of the Court and proposes that Arbitrators should be appointed to decide whether the Trustees of the Port of Bombay or the Secretary of State is liable. It appears that the Bombay Port Trust has claimed Rs.1,350 against Embarkation H.Q. against a claim under the

Workmen's Compensation Act. Lt. Col/H.Q. considers that if the deceased coolie can be said to have been a on a frolic of his own at the time of his death no claim would lie against embarkation H.Q. and in any event this is a matter which might be decided under paragraph 29 of the agreement. The R.L.A. is requested to advise on these points and generally. The questions for consideration are :-

(1) Whether the dependents of the deceased coolie are entitled to compensation under the Workmen's Compensation Act, 1923, if so,

(2) whether Government or the Bombay Port Trust would be liable to pay the compensation; and

(3) whether the question of liability can be referred to arbitration under clause 29 of the agreement.

2. Sub-section (1) of section 3 of the Workmen's Compensation Act, 1923 provides that if personal injury is caused to a workman by accident arising out of and in the course of his employment the employer shall be liable to pay compensation in accordance with the provisions of this chapter. Proviso (b)(ii) to that sub.section lays down that the employer shall not be so liable "in respect of any injury not resulting in death caused by an accident which is directly attributable to the wilful disobedience of the workman to an order expressly given or to a rule expressly framed for the purpose of securing the safety of the man. Consequently since death has been caused in this case, the disregard of any regulation by the deceased coolie would not defeat the claim of his dependents for compensation.

3. Under sub-section (1) of section 3 to substantiate a claim for compensation it is necessary to prove that the accident arose (i) out of an (ii) in the course of the workman's employment. Under the English Workmen's Compensation Act which is in pari material with the Indian Workmen's Compensation Act it is held that the obligation of the employer to his workman does not cease unless and until he has afforded reasonable means for the de departure of the latter from the house ship or premises of the former (Barbery V.Chugg, 1915 8.B.W.C.C. 37) and so long as the

as the workman is leaving the premises by a permitted way the employment will continue (Anderson vs. Rickman, 1923,21 B.W.C.C. 369 Willis's Workmen's Compensation p. 18). It is not clear from the papers in the present case that the coolie Kushaba Tukaram met his death while going by a permitted way. If he met his death while crossing or attempting to cross the prohibited railway while struck his dependents would not, it appears be entitled to compensation under the Workmen's Compensation Act.

4. Assuming that compensation can be claimed under the Act, the next question for consideration is whether Government or the Bombay Port Trust would be liable to pay it. Under sub-section (1) of section 12 the principal shall be liable to pay ~~commutation~~ compensation to the workman employed by his contractor for the execution of the whole or any part of the work; and ~~for the~~ under sub-section (2) the principal shall be entitled to be indemnified by the Contractor. Under the agreement between the Secretary of State and the Bombay Port Trust the latter has agreed to provide all such suitable labour boat tonnage, land carriage and all other means for landing and conveying by water and by land and handling over to consignees all stores and cargo brought by sea into the Port of Bombay etc. It appears that the coolie employed on sorting Government stores that day were supplied by the Bombay Port Trust. On the assumption that their employment was for a purpose within the scope of the agreement, sub-sections (1) and (2) of section 12 of the Workmen's Compensation Act would apply and even if Government were held liable to pay compensation for the death of Kushaba Tukaram the Bombay Port rust employment would be liable to indemnify Government. If however, their employment were otherwise than under the terms of the agreement i.e. if their services were lent or let on hire by the Bombay Port Trust, Government would be the employer within the meaning of clause(c) of section 3(1) and consequently liable to pay the compensation.

5. It is not understood how and under what provisions the Bombay Port Trust is claiming Rs. 1,350. There is nothing on record to show that that amount has been awarded as compensati under the Workmen's Compensation Act. It is presumed that the Bombay Port Trust is making the claim under the agreement. There does not appear to be any provision express or implied entitling the Bombay Port Trust to claim such compensation from Government. Clause 11 of the agreement provides that the contractors shall be answerable for the good behaviour of the men to be employed by them. Under this provision Government can claim compensation from the Bombay Port Trust for any loss or damage due to the misconduct of any workman employed. This clause does not appear to have any application to the present case. Clause 29 of the agreement provides for reference to arbitration of any dispute or difference arising between the contractors and the Secretary of State in respect of this contrac or the several matters specified therein or with reference to anything arising out or indidental there to. There is therefore no objection to Government claiming under clause 29 a reference to arbitration of the present question of liability to pay compensation claimed by the Bombay Port Trust.

Sd/ PNH.

Remembrancer of Legal Affairs.

VGP. 9-7-56.

Under section 13 of the Workmen's Compensation Act, 1923, Government would be entitled to be indemnified by the driver only if he is liable to pay damages for the injuries caused to the two P.W.D. coolies while working on the road. If the injuries were caused by an accident and not by the negligence of the driver, the latter would not be liable to pay compensation. Consequently Government would not be able to claim to be indemnified by the driver unless negligence on his part could be proved.

2. Under the Insurance policy the insured can claim to be indemnified by the Insurance Company only when his liability would arise. As stated above such liability would arise only when negligence can be proved. It is alleged in the present case that the injuries were caused by accident. If so, the insured would not be liable and the liability of the Insurance Company would not arise.

3. Government cannot in any case sue the Insurance Company. But if, the accident was due to the negligence of the driver or owner in the fitting of the ring of the rear wheel which is said to have slipped off and caused the injuries to the workmen, Government can sue them. A suit would not be advisable unless the negligence can be proved.

Sd.

Remembrancer of Legal Affairs.

U.H. to P.W.D. No.8396, dated the 29th November 1944.

VGP. 9-7-56.